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Paper No. 13

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In re Application of :  
George Brainard :  
Application No. 09/853,428 :  
Filed: May 10, 2001 :  
Attorney Docket No. :  
BRA01-NP002 :

**COPY MAILED**

**JUL 31 2003**

**OFFICE OF PETITIONS**

This is a decision on the Further Petition filed July 9, 2003, to revive the above-identified application, which is being treated as a Request for Reconsideration of Petition under 37 CFR 1.137(a). Petitioner requests revival based upon an unintentional delay in responding to the Office action under 37 CFR 1.137(a). A three (3) month extension-of-time is requested and is hereby granted.

The petition under is dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed June 6, 2002. The Office action set a three (3) month period for reply. No extensions of time having been obtained under 37 CFR 1.136(a), this application became abandoned on September 7, 2002. A Notice of Abandonment was mailed on December 10, 2002.

A petition was filed on January 21, 2003, wherein Petitioner asserted that the delay was unavoidable because Petitioner has not received the June 6, 2002, Office action. That petition was dismissed in a Decision mailed February 4, 2003, for failing to meet the requirements of a grantable petition under 37 CFR 1.137(a).

The instant petition states that Petitioner was not responsible for this application at the mailing of the Office action on June 6, 2002, but that the file was transferred from Thomas Jefferson University in August 2002 to Petitioner. Petitioner includes an unexecuted statement from a representative of the assignee at the time of the mailing of the June 6, 2002 Office action, Anthony Rowan of Thomas Jefferson University. Petitioner asserts that an executed copy will follow under separate cover. The unexecuted statement avers that Mr. Rowan has reviewed the file of this application "that is in our office; The Office action mailed June 6, 2002 is not in the file;". *Statement from Anthony Rowan at p.1.*

As iterated in the Decision dismissing petition, mailed February 4, 2003, an allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Accordingly, the statement from Mr. Rowan must be executed, and a copy of the docket record (or file jacket) where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. This copy must come from Thomas Jefferson University.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By facsimile: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.



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Office of Petitions